



State of New Hampshire  
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095

(603) 271-2147 FAX (603) 271-6588



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Dr. Jayakumar and Purnima Patil  
20 Golden Drive  
Bedford NH 03110-6008

**ADMINISTRATIVE ORDER**  
**No. WD 2002-22**

RE Town of Bedford Tax Map 7  
Lots, 38-68 and 38-62

June 25, 2002

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**A INTRODUCTION**

This Administrative Order is issued by the Department of Environmental Services, Water Division to Dr. Jayakumar and Purnima Patil pursuant to RSA 482-A:6. This Administrative Order is effective upon issuance.

**B. PARTIES**

1. The Department of Environmental Services, Water Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire; having its principal office at 6 Hazen Drive, Concord, NH 03301.
2. Dr. Jayakumar and Purnima Patil are individuals having a mailing address of 20 Golden Drive, Bedford, NH 03110-6008.

**C. STATEMENTS OF FACTS AND LAW**

1. Pursuant to RSA 482-A, the Department of Environmental Services ("DES") regulates dredging, filling, and construction in or on any bank, flat, marsh, wetland, or swamp in and adjacent to any waters of the state. Pursuant to RSA 482-A:11, I, the Commissioner of DES has adopted Wt 100 *et seq.* to implement this program.
2. RSA 482-A:14, III provides that failure, neglect or refusal to comply with RSA 482-A or rules adopted under that chapter, or an order or condition of a permit issued under RSA 482-A, and the misrepresentation by any person of a material fact made in connection with any activities regulated or prohibited by RSA 482-A shall be deemed violations of RSA 482-A.
3. Dr. Jayakumar and Purnima Patil own property on Cortland Drive and Baldwin Lane in Bedford, NH, more particularly identified on Town of Bedford Tax Map 17, as Lots 38-62 and 38-68 ("the Property").
4. On March 3, 1999, DES issued wetland permit # 1999-00294 ("the Permit") to the Patils, authorizing the placement of 63 square feet of fill in a forested wetland and installation of two 12 inch by 22 foot culverts for access to the Property. The Property is situated at the top of a hill with very steep slopes near Cortland Drive.

5. Permit Condition #7 states, "Appropriate siltation/erosion/turbidity controls shall be in place prior to construction, shall be maintained during construction, and shall remain until the area is stabilized."
6. On May 9, 2001, DES received a written complaint from the Town of Bedford Planning Department that the silt fence on the property had collapsed and that unstable soil had washed into a wetland and stream channel on the Property, depositing sediment in a culvert under Cortland Drive and into the wetland and stream channel on Lot 38-68 across the street. The complaint included photographs of the improperly maintained silt fence on the Property, siltation on the Property and in the culvert under Cortland Drive on the Property and on Lot 38-68.
7. On June 7, 2001, DES personnel inspected the Property. The inspection confirmed the information received in the Town of Bedford's complaint. In addition, DES personnel observed evidence of severe erosion and sedimentation on both lots. DES personnel noted that approximately 600 linear feet of stream channel was impacted by erosion/sedimentation of unstable soils.
8. During the June 7, 2001 inspection, DES personnel met with two consultants hired by Dr. and Mrs. Patil – Mr. Peter Schauer, a wetland consultant and the owner of Schauer Environmental Services LLC, and Mr. Bill Bourgeois of NH Builders, Inc. At that time, DES personnel instructed the consultants to immediately stabilize the Property. Specifically, DES personnel requested that Dr. and Mrs. Patil re-install the silt fence, repair the ruts in the disturbed soil, including the placement of seed and mulch over all disturbed areas, and submit a restoration plan to DES for review and approval within 30 days of inspection.
9. On June 20, 2001, DES sent a letter to Dr. and Mrs. Patil informing them of possible additional wetlands violations on the Property. Based on a complaint received by DES, including photographs, it appeared that failed siltation/erosion/turbidity control measures resulted in siltation into the wetlands and further stabilization was necessary. DES requested that Dr. and Mrs. Patil respond within 30 days of the date of the letter.
10. On July 11, 2001, DES personnel contacted Mr. Bourgeois regarding the status of the restoration plan for the property. Mr. Bourgeois stated that Mr. Schauer had completed the plan, that he (Mr. Bourgeois) had a meeting scheduled with the Dr. and Mrs. Patil "this week." He stated that he would call DES after the meeting about when the site stabilization work would begin.
11. On October 18, 2001, DES received another written complaint stating that the property appeared to be abandoned and that the site "is steadily eroding."
12. On October 19, 2001, DES sent another letter to Dr. and Mrs. Patil reaffirming the requests made by letter dated June 20, 2001.
13. To date, DES has received neither a response from Dr. and Mrs. Patil nor the restoration plan, requested by DES personnel on June 7, 2000.

14. According to the Town of Bedford Planning Department, as of June , 2002, the condition of the Property has not changed.

#### D. DETERMINATION OF VIOLATIONS

1. Dr. and Mrs. Patil have violated RSA 482-A by failing to comply with specific condition #7 of permit #1999-00294 which requires that "Appropriate siltation/erosion/turbidity controls shall be in place prior to construction, shall be maintained during construction, and shall remain until the area is stabilized."

#### E. ORDER

Based on the above findings, DES hereby orders Dr. and Mrs. Patil as follows

1. Immediately re-install all silt fence on the Property and immediately stabilize all exposed soil areas to prevent further sedimentation/erosion.
2. Within 20 days of the date of this Order, retain the services of a qualified wetlands scientist to prepare a restoration plan for the Property.
3. Within 20 days of the date of this Order, submit to DES for review and approval a plan for the restoration of the stream channel and channel banks, and the stabilization of all disturbed soils on the Property. The restoration plan should include:
  - a. A plan with dimensions, drawn to scale, indicating:
    - i. Wetland boundaries; and
    - ii. Existing conditions as they relate to the wetlands;
  - b. A plan showing current and proposed topographic elevations, including plan and cross-sectional views, for re-establishing wetlands;
  - c. A proposed means of erosion control (silt fence, hay bales, etc.) and stabilization of the restoration area;
  - d. A proposed planting plan for the stabilization and revegetation of the wetland area, including control of invasive species such as purple loosestrife (*Lythrum salicaria*) and common reed grass (*Phragmites australis*);
  - e. A proposed construction sequence and methods for accomplishing restoration and anticipated restoration compliance date;
  - f. A description of the method of documenting at least 75% survival of all restored vegetation including at a minimum, monitoring progress reports to be filed with DES for two successive growing seasons following completion of the restoration project; and
  - g. A proposed plan to delineate the wetlands within the restoration site after 5 full growing

seasons, including delineation data forms and a site plan.

3. Implement the restoration plan upon approval and as conditioned by DES.
4. Send correspondence, data, reports, and other submissions made in connection with this Administrative Order, **other than appeals**, to DES as follows:

Mary Ann Tilton  
DES Water Division  
6 Hazen Drive  
PO Box 95  
Concord, NH 03302-0095  
Fax: (603) 271-6588  
e-mail: mtilton@des.state.nh.us

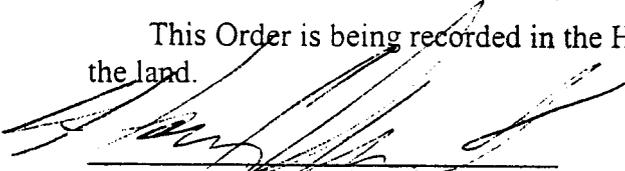
#### F. APPEAL

Any party aggrieved by this Order may apply for reconsideration with respect to any matter determined in this action within 20 days from the date of the Order. A motion for rehearing must describe in detail each ground for the request. DES may grant a rehearing if in its opinion, good reason is provided in the motion. Filing an appeal or motion for reconsideration of the Order will not automatically relieve the Patils of their obligation to comply with the Order.

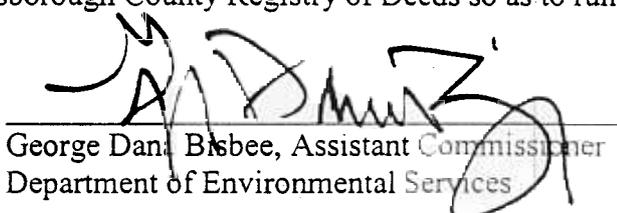
#### G. OTHER PROVISIONS

Please note that RSA 482-A provides for administrative fines, civil penalties, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself. The Patils remain obligated to comply with all applicable requirements. DES will continue to monitor the Patils compliance with applicable requirements and will take appropriate action if additional violations are discovered.

This Order is being recorded in the Hillsborough County Registry of Deeds so as to run with the land.



Harry T. Stewart, P.E., Director  
Water Division



George Dana Bisbee, Assistant Commissioner  
Department of Environmental Services

Certified Mail/RRR: 7001 1940 0002 4869 5475

- cc: Gretchen Rule, Administrator, DES Legal Unit  
Public Information Officer, DES PIP  
Jennifer Patterson, Senior Asst. Attorney General, EPB, NHDOJ  
Hillsborough County Registry of Deeds  
Bedford Selectmen  
Bedford Conservation Commission  
Nancy Larson, Bedford Planning Department  
Peter Schauer, Schauer Environmental Consultants, LLC